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Apple Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

## IN RE HIGH-TECH EMPLOYEE ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

**THIS DOCUMENT RELATES TO:**

**ANSWER OF DEFENDANT  
APPLE INC. TO PLAINTIFFS'  
CONSOLIDATED AMENDED  
COMPLAINT**

## ALL ACTIONS

## **DEMAND FOR JURY TRIAL**

1           Defendant Apple Inc. (“Apple”), by and through its attorneys, answers the Consolidated  
 2 Amended Complaint (“Complaint”) and alleges its affirmative defenses as follows. Apple denies  
 3 all allegations contained in the table of contents, section headings, graphs, or other portions of the  
 4 Complaint that are not contained within the specifically numbered Paragraphs of the Complaint.  
 5 Unless otherwise specifically noted, Apple lacks knowledge or information sufficient to admit or  
 6 deny the truth of allegations concerning persons or entities other than Apple. To the extent that  
 7 the Complaint contains such allegations concerning other persons or entities, Apple denies that  
 8 they support any claim for relief against Apple. Apple objects to responding to any legal  
 9 conclusions contained within the Complaint.

10           1.       To the extent that the allegations in Paragraph 1 are directed to Apple, Apple  
  11 denies that it participated in the conspiracy alleged in the Complaint. Apple lacks knowledge or  
  12 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1,  
  13 and on that basis denies each and every such allegation. Except as otherwise expressly admitted,  
  14 Apple denies each and every allegation in Paragraph 1.

15           2.       Apple admits that Plaintiffs are attempting to bring this action to recover alleged  
  16 damages pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act,  
  17 California Business and Professions Code §§ 16720, *et seq.*, but denies that Apple has committed  
  18 any wrongdoing or violation of law that would entitle Plaintiffs to any relief from Apple and  
  19 further denies that Plaintiffs have been injured by Apple, or at all. Apple denies that Plaintiffs are  
  20 seeking injunctive relief or asserting claims under California Business and Professions Code  
  21 §16600 or §17200, as Plaintiffs have withdrawn and/or dismissed those claims. Apple lacks  
  22 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
  23 Paragraph 2, and on that basis denies them. Except as otherwise expressly admitted, Apple  
  24 denies each and every allegation in Paragraph 2.

25           3.       Apple admits that the Antitrust Division of the United States Department of Justice  
  26 (the “DOJ”) conducted an investigation in 2009 and 2010 and that it filed a complaint against  
  27 Apple and other Defendants in which it made the allegations quoted in Paragraph 3. Except as  
  28 otherwise expressly admitted, Apple denies each and every allegation in Paragraph 3.

1       4. To the extent that the allegations in Paragraph 4 are directed to Apple, Apple  
 2 denies that it engaged in unlawful collusion. Apple lacks knowledge or information sufficient to  
 3 form a belief as to the truth of the remaining allegations in Paragraph 4, and on that basis denies  
 4 them. Except as otherwise expressly admitted, Apple denies each and every allegation in  
 5 Paragraph 4.

6       5. Apple admits that Plaintiffs are attempting to bring this action to recover alleged  
 7 damages pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act,  
 8 California Business and Professions Code §§ 16720, *et seq.*, but denies that Apple has committed  
 9 any wrongdoing or violation of law that would entitle Plaintiffs to any relief from Apple and  
 10 further denies that Plaintiffs have been injured by Apple, or at all. Apple denies that Plaintiffs are  
 11 seeking injunctive relief or asserting claims under California Business and Professions Code  
 12 §16600 or §17200, as Plaintiffs have withdrawn and/or dismissed those claims. Apple lacks  
 13 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
 14 Paragraph 5, and on that basis denies each and every such allegation. Except as otherwise  
 15 expressly admitted, Apple denies each and every allegation in Paragraph 5.

16       6. Apple admits that the Court has subject matter jurisdiction over this action.

17       7. Apple admits that venue in this judicial district is proper. Except as otherwise  
 18 expressly admitted, Apple denies each and every allegation in Paragraph 7.

19       8. Apple admits that it is subject to the Court's jurisdiction. Apple lacks knowledge  
 20 or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph  
 21 8, and on that basis denies them.

22       9. Paragraph 9 asserts legal conclusions to which no response is required. To the  
 23 extent that a response is required and the allegations in Paragraph 9 are directed to Apple, Apple  
 24 denies each and every such allegation. Apple lacks knowledge or information sufficient to form a  
 25 belief as to the truth of remaining allegations in Paragraph 9, and on that basis denies each and  
 26 every allegation in Paragraph 9.

27       10. To the extent that the allegations in Paragraph 10 are directed to Apple, Apple  
 28 denies that it participated in the conspiracy alleged in the Complaint. Apple lacks knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10,  
 2 and on that basis denies them. Except as otherwise expressly admitted, Apple denies each and  
 3 every allegation in Paragraph 10.

4       11. To the extent that the allegations in Paragraph 11 are directed to Apple, Apple  
 5 denies that it participated in the conspiracy alleged in the Complaint. Apple lacks knowledge or  
 6 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11,  
 7 and on that basis denies them. Except as otherwise expressly admitted, Apple denies each and  
 8 every allegation in Paragraph 11.

9       12. Apple admits that it has employed persons alleged to be class members in  
 10 California and more specifically, Santa Clara County. Apple further admits that its principal  
 11 place of business is in Santa Clara County. Apple lacks knowledge or information sufficient to  
 12 form a belief as to the truth of the remaining allegations in Paragraph 12, and on that basis denies  
 13 them. Except as otherwise expressly admitted, Apple denies each and every allegation in  
 14 Paragraph 12.

15       13. To the extent that the allegations in Paragraph 13 are directed to Apple, Apple  
 16 denies that Plaintiffs have been injured by Apple, or at all. Apple lacks knowledge or information  
 17 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13, and on that  
 18 basis denies them. Except as otherwise expressly admitted, Apple denies each and every  
 19 allegation in Paragraph 13.

20       14. To the extent that the allegations in Paragraph 14 are directed to Apple, Apple  
 21 denies that it committed any acts that give rise to any claim or injury alleged by Plaintiffs. Apple  
 22 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in  
 23 Paragraph 14, and on that basis denies each and every allegation in Paragraph 14.

24       15. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
 25 the allegations in Paragraph 15, and on that basis denies each and every allegation in Paragraph  
 26 15.

27       16. Apple denies that Mr. Devine has been injured by Apple, or at all. Apple lacks  
 28 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in

1 Paragraph 16, and on that basis denies each and every such allegation.

2       17. Apple denies that Mr. Fichtner has been injured by Apple, or at all. Apple lacks  
3 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
4 Paragraph 17, and on that basis denies each and every such allegation.

5       18. Apple denies that Mr. Hariharan has been injured by Apple, or at all. Apple lacks  
6 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
7 Paragraph 18, and on that basis denies each and every such allegation.

8       19. Apple denies that Mr. Marshall has been injured by Apple, or at all. Apple lacks  
9 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
10 Paragraph 19, and on that basis denies each and every such allegation.

11      20. Apple denies that Mr. Stover has been injured by Apple, or at all. Apple lacks  
12 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
13 Paragraph 20, and on that basis denies each and every such allegation.

14      21. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
15 the allegations in Paragraph 21.

16      22. Apple admits that it is a California corporation with its principal place of business  
17 located at 1 Infinite Loop, Cupertino, California 95014.

18      23. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
19 the allegations in Paragraph 23.

20      24. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
21 the allegations in Paragraph 24.

22      25. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
23 the allegations in Paragraph 25.

24      26. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
25 the allegations in Paragraph 26.

26      27. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
27 the allegations in Paragraph 27.

1       28.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
2 the allegations in Paragraph 28, and on that basis denies each and every allegation in Paragraph  
3 28.

4       29.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
5 the allegations in Paragraph 29, and on that basis denies each and every allegation in Paragraph  
6 29.

7       30.     Apple admits that Plaintiffs are attempting to bring this action as a class action, but  
8 denies that this action may be maintained as a class action on behalf of the purported class or  
9 otherwise. Except as otherwise expressly admitted, Apple denies each and every allegation in  
10 Paragraph 30.

11      31.     Apple admits that it has employed many individuals who fall within Plaintiffs'  
12 purported Class definition contained in Paragraph 30, but Apple denies that this action may be  
13 maintained as a class action on behalf of the purported class or otherwise. Apple lacks  
14 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
15 contained in Paragraph 31, and on that basis denies each and every such allegation.

16      32.     Paragraph 32 contains legal conclusions to which no response is required. Apple  
17 denies that this action may be maintained as a class action on behalf of the purported class or  
18 otherwise. Apple further denies that it has committed any wrongdoing or violation of law that  
19 would entitle Plaintiffs to any relief from Apple and further denies that Plaintiffs have been  
20 injured by Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to  
21 the truth of the remaining allegations contained in Paragraph 32, and on that basis denies them.  
22 Except as otherwise admitted, Apple denies each and every allegation in Paragraph 32, including  
23 each of its subparts.

24      33.     Apple denies that this action may be maintained as a class action on behalf of the  
25 purported class or otherwise, and denies each and every allegation in Paragraph 33.

26      34.     Apple denies that this action may be maintained as a class action on behalf of the  
27 purported class or otherwise, and denies each and every allegation in Paragraph 34.

28

1       35. Apple denies that this action may be maintained as a class action on behalf of the  
2 purported class or otherwise. Apple lacks knowledge or information sufficient to form a belief as  
3 to the truth of the allegations contained in Paragraph 35, and on that basis denies them.

4       36. Apple denies that this action may be maintained as a class action on behalf of the  
5 purported class or otherwise. Apple lacks knowledge or information sufficient to form a belief as  
6 to the truth of the allegations contained in Paragraph 36, and on that basis denies them.

7       37. Apple denies that this action may be maintained as a class action on behalf of the  
8 purported class or otherwise, and denies each and every allegation in Paragraph 37.

9       38. Apple denies that this action may be maintained as a class action on behalf of the  
10 purported class or otherwise, and denies each and every allegation in Paragraph 38.

11      39. To the extent that the allegations in Paragraph 39 are directed to Apple, Apple  
12 admits that it has employed persons alleged to be class members in California and the United  
13 States, including in this judicial district. Apple denies that this action may be maintained as a  
14 class action on behalf of the purported class or otherwise. Apple lacks knowledge or information  
15 sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 39,  
16 and on that basis denies them. Except as otherwise expressly admitted, Apple denies each and  
17 every allegation in Paragraph 39.

18      40. To the extent that the allegations in Paragraph 40 are directed to Apple, Apple  
19 denies them and specifically denies that Plaintiffs have been injured by Apple, or at all. Apple  
20 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
21 allegations contained in Paragraph 40, and on that basis denies them. Except as otherwise  
22 expressly admitted, Apple denies each and every allegation in Paragraph 40.

23      41. Apple admits that cold calling is one of many methods it has used to recruit  
24 potential employees, and that such cold calling may include communicating directly with a  
25 potential employee who has not otherwise applied for a job opening. Apple lacks knowledge or  
26 information sufficient to form a belief as to the truth of the remaining allegations contained in  
27 Paragraph 41, and on that basis denies them. Except as otherwise expressly admitted, Apple  
28 denies each and every allegation in Paragraph 41.

1       42. To the extent that Paragraph 42 is directed to Apple, Apple denies each and every  
2 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
3 to the truth of the remaining allegations contained in Paragraph 42, and on that basis denies them.  
4 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 42.

5       43. To the extent that Paragraph 43 is directed to Apple, Apple denies each and every  
6 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
7 to the truth of the remaining allegations contained in Paragraph 43, and on that basis denies them.  
8 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 43.

9       44. To the extent that Paragraph 44 is directed to Apple, Apple denies each and every  
10 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
11 to the truth of the remaining allegations contained in Paragraph 44, and on that basis denies them.  
12 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 44.

13       45. To the extent that Paragraph 45 is directed to Apple, Apple denies each and every  
14 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
15 to the truth of the remaining allegations contained in Paragraph 45, and on that basis denies them.  
16 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 45.

17       46. Apple admits that it has hired employees after having communicated with them  
18 when they had not otherwise applied for a job opening at Apple. Apple lacks knowledge or  
19 information sufficient to form a belief as to the truth of the remaining allegations contained in  
20 Paragraph 46, and on that basis denies them. Except as otherwise expressly admitted, Apple  
21 denies each and every allegation in Paragraph 46.

22       47. To the extent that Paragraph 47 is directed to Apple, Apple denies each and every  
23 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
24 to the truth of the remaining allegations contained in Paragraph 47, and on that basis denies each  
25 and every such allegation.

26       48. To the extent that Paragraph 48 is directed to Apple, Apple denies each and every  
27 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
28 to the truth of the remaining allegations contained in Paragraph 48, and on that basis denies each

1 and every such allegation.

2 49. To the extent that Paragraph 49 is directed to Apple, Apple denies each and every  
3 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
4 to the truth of the remaining allegations contained in Paragraph 49, and on that basis denies each  
5 and every such allegation.

6 50. To the extent that Paragraph 50 is directed to Apple, Apple denies each and every  
7 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
8 to the truth of the remaining allegations contained in Paragraph 50, and on that basis denies each  
9 and every such allegation.

10 51. To the extent that Paragraph 51 is directed to Apple, Apple admits that many  
11 factors affect how it determines compensation for its employees, including in part to maintain  
12 employee morale and productivity, retain employees, and attract new employees. Apple lacks  
13 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
14 contained in Paragraph 51, and on that basis denies them. Except as otherwise expressly  
15 admitted, Apple denies each and every allegation in Paragraph 51.

16 52. To the extent that Paragraph 52 is directed to Apple, Apple denies each and every  
17 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
18 to the truth of the remaining allegations contained in Paragraph 52, and on that basis denies them.  
19 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 52.

20 53. To the extent that Paragraph 53 is directed to Apple, Apple admits that at times it  
21 engages in negotiations regarding compensation levels with individual employees. Apple lacks  
22 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
23 contained in Paragraph 53, and on that basis denies them. Except as otherwise expressly  
24 admitted, Apple denies each and every allegation in Paragraph 53.

25 54. To the extent that Paragraph 54 is directed to Apple, Apple denies each and every  
26 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
27 to the truth of the remaining allegations contained in Paragraph 54, and on that basis denies them.  
28 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 54.

1       55. To the extent that Paragraph 55 is directed to Apple, Apple denies each and every  
2 allegation contained therein. Apple specifically denies that it participated in the conspiracy  
3 alleged in the Complaint. Apple lacks knowledge or information sufficient to form a belief as to  
4 the truth of the remaining allegations contained in Paragraph 55. Except as otherwise expressly  
5 admitted, Apple denies each and every allegation in Paragraph 55.

6       56. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
7 the allegations in Paragraph 56, and on that basis denies each and every allegation in Paragraph  
8 56.

9       57. Apple admits that for some period of time, Steve Jobs was CEO of Pixar while he  
10 was also CEO of Apple. Apple lacks knowledge or information sufficient to form a belief as to  
11 the truth of the remaining allegations contained in Paragraph 57. Except as otherwise expressly  
12 admitted, Apple denies each and every allegation in Paragraph 57.

13       58. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
14 the allegations in Paragraph 58 regarding entities other than Apple, and on that basis denies each  
15 and every allegation in Paragraph 58.

16       59. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
17 the allegations in Paragraph 59 regarding entities other than Apple, and on that basis denies each  
18 and every allegation in Paragraph 59.

19       60. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
20 the allegations in Paragraph 60 regarding entities other than Apple, and on that basis denies each  
21 and every allegation in Paragraph 60.

22       61. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
23 the allegations in Paragraph 61 regarding entities other than Apple, and on that basis denies each  
24 and every allegation in Paragraph 61.

25       62. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
26 the allegations in Paragraph 62 regarding entities other than Apple, and on that basis denies each  
27 and every allegation in Paragraph 62.

28

1       63.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
2 the allegations in Paragraph 63 regarding entities other than Apple, and on that basis denies each  
3 and every allegation in Paragraph 63.

4       64.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
5 the allegations in Paragraph 64 regarding entities other than Apple, and on that basis denies each  
6 and every allegation in Paragraph 64.

7       65.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
8 the allegations in Paragraph 65 regarding entities other than Apple, and on that basis denies each  
9 and every allegation in Paragraph 65.

10      66.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
11 the allegations in Paragraph 66 regarding entities other than Apple, and on that basis denies each  
12 and every allegation in Paragraph 66.

13      67.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
14 the allegations in Paragraph 67 regarding entities other than Apple, and on that basis denies each  
15 and every allegation in Paragraph 67.

16      68.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
17 the allegations in Paragraph 68 regarding entities other than Apple, and on that basis denies each  
18 and every allegation in Paragraph 68.

19      69.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
20 the allegations in Paragraph 69 regarding entities other than Apple, and on that basis denies each  
21 and every allegation in Paragraph 69.

22      70.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
23 the allegations in Paragraph 70 regarding entities other than Apple, and on that basis denies each  
24 and every allegation in Paragraph 70.

25      71.     Apple lacks knowledge or information sufficient to form a belief as to the truth of  
26 the allegations in Paragraph 71 regarding entities other than Apple, and on that basis denies each  
27 and every allegation in Paragraph 71.

1       72. Apple admits that Steve Jobs was its CEO in 2005. Except as otherwise expressly  
 2 admitted, Apple denies each and every allegation in Paragraph 72.

3       73. To the extent that Paragraph 73 is directed to Apple, Apple admits that, to permit  
 4 its collaborative relationship with Adobe to work effectively, it at times had an understanding that  
 5 Apple and Adobe would refrain from actively soliciting each other's employees unless those  
 6 employees indicated an interest in changing employment. Except as otherwise expressly  
 7 admitted, Apple denies each and every allegation in Paragraph 73.

8       74. Apple admits that one of its senior executives communicated with a senior  
 9 executive at Adobe regarding the active recruitment of each other's employees. Except as  
 10 otherwise expressly admitted, Apple denies each and every allegation in Paragraph 74.

11      75. Apple denies each and every allegation in Paragraph 75.

12      76. Apple denies each and every allegation in Paragraph 76.

13      77. To the extent that Paragraph 77 is directed to Apple, Apple denies each and every  
 14 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
 15 to the truth of the remaining allegations contained in Paragraph 77, and on that basis denies them.  
 16 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 77.

17      78. To the extent that Paragraph 78 is directed to Apple, Apple admits that it is aware  
 18 of a few instances in which it communicated with its recruiters and hiring staff regarding its  
 19 decision to refrain from cold calling employees of Adobe. Apple lacks knowledge or information  
 20 sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 78,  
 21 and on that basis denies them. Except as otherwise expressly admitted, Apple denies each and  
 22 every allegation in Paragraph 78.

23      79. Apple admits that during 2006 Arthur D. Levinson sat on the Board of Directors of  
 24 Apple and Google. To the extent that Paragraph 79 is directed to Apple, Apple admits that, to  
 25 permit its collaborative relationship with Google to work effectively, it at times had an  
 26 understanding that Apple and Google would refrain from actively soliciting each other's  
 27 employees unless those employees indicated an interest in changing employment. Except as  
 28 otherwise expressly admitted, Apple denies each and every allegation in Paragraph 79.

1           80. Apple denies each and every allegation in Paragraph 80.

2           81. Apple denies each and every allegation in Paragraph 81.

3           82. To the extent that Paragraph 82 is directed to Apple, Apple denies each and every  
4 allegation contained therein. Apple lacks knowledge or information sufficient to form a belief as  
5 to the truth of the remaining allegations contained in Paragraph 82, and on that basis denies them.  
6 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 82.

7           83. To the extent that Paragraph 83 is directed to Apple, Apple admits that it is aware  
8 of a few instances in which it communicated with its recruiters and hiring staff regarding its  
9 decision to refrain from cold calling employees of Google. Apple lacks knowledge or  
10 information sufficient to form a belief as to the truth of the remaining allegations contained in  
11 Paragraph 83, and on that basis denies them. Except as otherwise expressly admitted, Apple  
12 denies each and every allegation in Paragraph 83.

13          84. Apple admits that one of its senior executives communicated with a senior  
14 executive at Google regarding active recruitment of each other's employees. Apple lacks  
15 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
16 contained in Paragraph 84. Except as otherwise expressly admitted, Apple denies each and every  
17 allegation in Paragraph 84.

18          85. Apple denies each and every allegation in Paragraph 85.

19          86. Apple denies each and every allegation in Paragraph 86.

20          87. Apple admits that the Walt Disney Company acquired Pixar in 2006, and that  
21 Steve Jobs thereafter became Disney's largest single shareholder. Apple also admits that Jobs  
22 was a member of Disney's Board of Directors and of the Disney-Pixar six-person steering  
23 committee, through which he oversaw Pixar. Except as otherwise expressly admitted, Apple  
24 denies each and every allegation in Paragraph 87.

25          88. Apple denies each and every allegation in Paragraph 88.

26          89. Apple denies each and every allegation in Paragraph 89.

27          90. To the extent that Paragraph 90 is directed to Apple, Apple admits that it is aware  
28 of a few instances in which it communicated with its recruiters and hiring staff regarding its

1 decision to refrain from cold calling employees of Pixar. Apple lacks knowledge or information  
2 sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 90.  
3 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 90.

4 91. Apple denies each and every allegation in Paragraph 91.

5 92. Apple admits that Steve Jobs contacted Ed Colligan, the CEO of Palm Inc., in  
6 August 2007. Except as otherwise expressly admitted, Apple denies each and every allegation in  
7 Paragraph 92.

8 93. Apple admits that Palm hired Jon Rubinstein, formerly an executive at Apple,  
9 from his job at Apple. Except as otherwise expressly admitted, Apple denies each and every  
10 allegation in Paragraph 93.

11 94. Apple admits that Steve Jobs communicated with Ed Colligan, and that this  
12 communication contained the words quoted in Paragraph 94. Except as otherwise expressly  
13 admitted, Apple denies each and every allegation in Paragraph 94.

14 95. Apple admits that Ed Colligan responded to the communication with Steve Jobs,  
15 and that his response contained the words quoted in Paragraph 95. Except as otherwise expressly  
16 admitted, Apple denies each and every allegation in Paragraph 95.

17 96. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
18 the allegations contained in Paragraph 96, and on that basis denies them.

19 97. Apple admits that Eric Schmidt and Arthur Levinson sat on Apple's Board of  
20 Directors in 2007. Except as otherwise expressly admitted, Apple denies each and every  
21 allegation in Paragraph 97.

22 98. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
23 the allegations in Paragraph 98 regarding entities other than Apple, and on that basis denies each  
24 and every allegation in Paragraph 98.

25 99. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
26 the allegations in Paragraph 99 regarding entities other than Apple, and on that basis denies each  
27 and every allegation in Paragraph 99.

28

1       100. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
2 the allegations in Paragraph 100 regarding entities other than Apple, and on that basis denies each  
3 and every allegation in Paragraph 100.

4       101. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
5 the allegations in Paragraph 101 regarding entities other than Apple, and on that basis denies each  
6 and every allegation in Paragraph 101.

7       102. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
8 the allegations in Paragraph 102 regarding entities other than Apple, and on that basis denies each  
9 and every allegation in Paragraph 102.

10       103. Apple admits that Eric Schmidt and Arthur Levinson sat on Apple's Board of  
11 Directors in 2007. Except as otherwise expressly admitted, Apple denies each and every  
12 allegation in Paragraph 103.

13       104. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
14 the allegations in Paragraph 104 regarding entities other than Apple, and on that basis denies each  
15 and every allegation in Paragraph 104.

16       105. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
17 the allegations in Paragraph 105 regarding entities other than Apple, and on that basis denies each  
18 and every allegation in Paragraph 105.

19       106. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
20 the allegations in Paragraph 106 regarding entities other than Apple, and on that basis denies each  
21 and every allegation in Paragraph 106.

22       107. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
23 the allegations in Paragraph 107 regarding entities other than Apple, and on that basis denies each  
24 and every allegation in Paragraph 107.

25       108. To the extent that Paragraph 108 is directed to Apple, Apple denies each and every  
26 allegation contained therein. Apple specifically denies that it participated in the conspiracy  
27 alleged in the Complaint and further denies that Plaintiffs have been injured by Apple, or at all.  
28 Apple lacks knowledge or information sufficient to form a belief as to the truth of the remaining

1 allegations contained in Paragraph 108, and on that basis denies them. Except as otherwise  
 2 expressly admitted, Apple denies each and every allegation in Paragraph 108.

3       109. To the extent that Paragraph 109 is directed to Apple, Apple denies each and every  
 4 allegation contained therein. Apple specifically denies that it participated in the conspiracy  
 5 alleged in the Complaint and further denies that Plaintiffs have been injured by Apple, or at all.  
 6 Apple lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
 7 allegations contained in Paragraph 109, and on that basis denies them. Except as otherwise  
 8 expressly admitted, Apple denies each and every allegation in Paragraph 109.

9       110. To the extent that Paragraph 110 is directed to Apple, Apple denies each and every  
 10 allegation contained therein. Apple specifically denies that it participated in the conspiracy  
 11 alleged in the Complaint and further denies that Plaintiffs have been injured by Apple, or at all.  
 12 Apple lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
 13 allegations contained in Paragraph 110, and on that basis denies them. Except as otherwise  
 14 expressly admitted, Apple denies each and every allegation in Paragraph 110.

15       111. Apple admits that the Antitrust Division of the United States Department of Justice  
 16 (the “DOJ”) conducted an investigation beginning in 2009, that the DOJ issued a Civil  
 17 Investigative Demand to Apple, and that Apple produced documents responsive to the Civil  
 18 Investigative Demand. Apple lacks knowledge or information sufficient to form a belief as to the  
 19 truth of the remaining allegations contained in Paragraph 111, and on that basis denies them.  
 20 Except as otherwise expressly admitted, Apple denies each and every allegation in Paragraph 111.

21       112. Apple admits that the DOJ filed a complaint in which it made the allegations  
 22 quoted in Paragraph 112. Except as otherwise expressly admitted, Apple denies each and every  
 23 allegation in Paragraph 112.

24       113. Apple admits that the DOJ filed a complaint in which it made the allegations  
 25 quoted in Paragraph 113. Except as otherwise expressly admitted, Apple denies each and every  
 26 allegation in Paragraph 113.

27       114. Apple admits that the DOJ filed the complaints and stipulated proposed final  
 28 judgments referenced in Paragraph 114, and that the stipulated proposed final judgments contain

1 the words quoted in Paragraph 114. Except as otherwise expressly admitted, Apple denies each  
 2 and every allegation in Paragraph 114.

3       115. Apple admits that the DOJ filed stipulated proposed final judgments containing the  
 4 words quoted in Paragraph 115. Apple further admits that the United States District Court for the  
 5 District of Columbia entered the stipulated proposed final judgments on March 17, 2011 and June  
 6 3, 2011. Except as otherwise expressly admitted, Apple denies each and every allegation in  
 7 Paragraph 115.

8       116. Apple lacks knowledge or information sufficient to form a belief as to the truth of  
 9 the allegations in Paragraph 116 and on that basis denies each and every allegation in Paragraph  
 10 116.

11       117. Apple admits that the DOJ did not seek monetary penalties against Apple. Apple  
 12 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
 13 allegations in Paragraph 117 and on that basis denies them. Apple specifically denies that  
 14 Plaintiffs have been injured by Apple, or at all. Except as otherwise expressly admitted, Apple  
 15 denies each and every allegation in Paragraph 117.

16       118. Apple denies each and every allegation in Paragraph 118. Apple specifically  
 17 denies that Apple has committed any wrongdoing or violation of law that would entitle Plaintiffs  
 18 to any relief from Apple and further denies that Plaintiffs have been injured by Apple, or at all.  
 19 Apple further denies that this action may be maintained as a class action on behalf of the  
 20 purported class or otherwise.

21       119. Apple incorporates by reference and restates its responses to the allegations  
 22 contained in Paragraphs 1 through 118. Except as otherwise expressly admitted, Apple denies  
 23 each and every allegation in Paragraph 119.

24       120. Paragraph 120 alleges legal conclusions to which no response is required. To the  
 25 extent that a response is required and the allegations in Paragraph 120 are directed to Apple,  
 26 Apple denies each and every allegation. Apple specifically denies that Apple has committed any  
 27 wrongdoing or violation of law. Apple lacks knowledge or information sufficient to form a belief  
 28 as to the truth of the remaining allegations contained in Paragraph 120, and on that basis denies

1 each and every such allegation in Paragraph 120.

2       121. To the extent that the allegations in Paragraph 121 are directed to Apple, Apple  
3 denies each and every allegation. Apple specifically denies that Plaintiffs have been injured by  
4 Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to the truth  
5 of the remaining allegations contained in Paragraph 121, and on that basis denies each and every  
6 allegation in Paragraph 121.

7       122. To the extent that the allegations in Paragraph 122 are directed to Apple, Apple  
8 denies each and every allegation. Apple specifically denies that Plaintiffs have been injured by  
9 Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to the truth  
10 of the remaining allegations contained in Paragraph 122, and on that basis denies each and every  
11 allegation in Paragraph 122.

12       123. To the extent that the allegations in Paragraph 123 are directed to Apple, Apple  
13 denies each and every allegation. Apple specifically denies that Plaintiffs have been injured by  
14 Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to the truth  
15 of the remaining allegations contained in Paragraph 123, and on that basis denies each and every  
16 allegation in Paragraph 123.

17       124. To the extent that the allegations in Paragraph 124 are directed to Apple, Apple  
18 denies each and every allegation. Apple specifically denies that it participated in the conspiracy  
19 alleged in the Complaint. Apple lacks knowledge or information sufficient to form a belief as to  
20 the truth of the remaining allegations contained in Paragraph 124, and on that basis denies each  
21 and every allegation in Paragraph 124.

22       125. Paragraph 125 contains legal conclusions to which no response is required. Except  
23 as otherwise admitted, Apple denies each and every allegation in Paragraph 125.

24       126. Paragraph 126 alleges legal conclusions to which no response is required. To the  
25 extent that a response is required and the allegations in Paragraph 126 are directed to Apple,  
26 Apple denies each and every allegation. Apple specifically denies that Plaintiffs and/or members  
27 of the purported class are entitled to any relief. Apple also denies that this action may be  
28 maintained as a class action on behalf of the purported class or otherwise. Apple lacks

1 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
2 Paragraph 126. Except as otherwise expressly admitted, Apple denies each and every allegation  
3 in Paragraph 126.

4       127. Apple incorporates by reference and restates its responses to the allegations  
5 contained in Paragraphs 1 through 126. Except as otherwise expressly admitted, Apple denies  
6 each and every allegation in Paragraph 127.

7       128. Paragraph 128 alleges legal conclusions to which no response is required. To the  
8 extent that a response is required and the allegations in Paragraph 128 are directed to Apple,  
9 Apple denies each and every allegation. Apple specifically denies that Apple has committed any  
10 wrongdoing or violation of law. Apple lacks knowledge or information sufficient to form a belief  
11 as to the truth of the remaining allegations contained in Paragraph 128, and on that basis denies  
12 each and every such allegation in Paragraph 128.

13       129. To the extent that the allegations in Paragraph 129 are directed to Apple, Apple  
14 denies each and every allegation. Apple specifically denies that Plaintiffs have been injured by  
15 Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to the truth  
16 of the remaining allegations contained in Paragraph 129, and on that basis denies each and every  
17 allegation in Paragraph 129.

18       130. To the extent that the allegations in Paragraph 130 are directed to Apple, Apple  
19 denies each and every allegation. Apple specifically denies that Plaintiffs have been injured by  
20 Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to the truth  
21 of the remaining allegations contained in Paragraph 130, and on that basis denies each and every  
22 allegation in Paragraph 130.

23       131. To the extent that the allegations in Paragraph 131 are directed to Apple, Apple  
24 denies each and every allegation. Apple specifically denies that Plaintiffs have been injured by  
25 Apple, or at all. Apple lacks knowledge or information sufficient to form a belief as to the truth  
26 of the remaining allegations contained in Paragraph 131, and on that basis denies each and every  
27 allegation in Paragraph 131.

28

1       132. Apple admits that Plaintiffs and members of the purported class are “persons”  
 2 within the meaning of the Cartwright Act as defined in section 16702. Apple denies that it has  
 3 violated the Cartwright Act, or that members of the purported class are entitled to allege a  
 4 Cartwright Act claim. Except as otherwise admitted, Apple denies each and every allegation in  
 5 Paragraph 132.

6       133. To the extent that the allegations in Paragraph 133 are directed to Apple, Apple  
 7 denies each and every allegation. Apple specifically denies that it participated in the conspiracy  
 8 alleged in the Complaint. Apple lacks knowledge or information sufficient to form a belief as to  
 9 the truth of the remaining allegations contained in Paragraph 133, and on that basis denies each  
 10 and every allegation in Paragraph 133.

11       134. Paragraph 134 contains legal conclusions to which no response is required. Except  
 12 as otherwise admitted, Apple denies each and every allegation in Paragraph 134.

13       135. Paragraph 135 alleges legal conclusions to which no response is required. To the  
 14 extent that a response is required and the allegations in Paragraph 135 are directed to Apple,  
 15 Apple denies each and every allegation. Apple specifically denies that Plaintiffs and/or members  
 16 of the purported class are entitled to any relief. Apple also denies that this action may be  
 17 maintained as a class action on behalf of the purported class or otherwise. Apple lacks  
 18 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
 19 Paragraph 135. Except as otherwise expressly admitted, Apple denies each and every allegation  
 20 in Paragraph 135.

21       136. Plaintiffs dismissed this claim, and no response is required. To the extent a  
 22 response is required and the allegations are directed at Apple, Apple denies each and every  
 23 allegation in Paragraph 136.

24       137. Plaintiffs dismissed this claim, and no response is required. To the extent a  
 25 response is required and the allegations are directed at Apple, Apple denies each and every  
 26 allegation in Paragraph 137.

27       138. Plaintiffs dismissed this claim, and no response is required. To the extent a  
 28 response is required and the allegations are directed at Apple, Apple denies each and every

1 allegation in Paragraph 138.

2 139. Plaintiffs dismissed this claim, and no response is required. To the extent a  
3 response is required and the allegations are directed at Apple, Apple denies each and every  
4 allegation in Paragraph 139.

5 140. Plaintiffs dismissed this claim, and no response is required. To the extent a  
6 response is required and the allegations are directed at Apple, Apple denies each and every  
7 allegation in Paragraph 140.

8 141. Plaintiffs dismissed this claim, and no response is required. To the extent a  
9 response is required and the allegations are directed at Apple, Apple denies each and every  
10 allegation in Paragraph 141.

11 142. Plaintiffs dismissed this claim, and no response is required. To the extent a  
12 response is required and the allegations are directed at Apple, Apple denies each and every  
13 allegation in Paragraph 142.

14 143. Plaintiffs dismissed this claim, and no response is required. To the extent a  
15 response is required and the allegations are directed at Apple, Apple denies each and every  
16 allegation in Paragraph 143.

17 144. Plaintiffs dismissed this claim, and no response is required. To the extent a  
18 response is required and the allegations are directed at Apple, Apple denies each and every  
19 allegation in Paragraph 144.

20 145. Plaintiffs dismissed this claim, and no response is required. To the extent a  
21 response is required and the allegations are directed at Apple, Apple denies each and every  
22 allegation in Paragraph 145.

23 146. Plaintiffs dismissed this claim, and no response is required. To the extent a  
24 response is required and the allegations are directed at Apple, Apple denies each and every  
25 allegation in Paragraph 146.

26 147. Plaintiffs dismissed this claim, and no response is required. To the extent a  
27 response is required and the allegations are directed at Apple, Apple denies each and every  
28 allegation in Paragraph 147.

1       148. Plaintiffs dismissed this claim, and no response is required. To the extent a  
2 response is required and the allegations are directed at Apple, Apple denies each and every  
3 allegation in Paragraph 148.

4       149. Plaintiffs dismissed this claim, and no response is required. To the extent a  
5 response is required and the allegations are directed at Apple, Apple denies each and every  
6 allegation in Paragraph 149.

7       150. Plaintiffs dismissed this claim, and no response is required. To the extent a  
8 response is required and the allegations are directed at Apple, Apple denies each and every  
9 allegation in Paragraph 150.

10       151. Plaintiffs dismissed this claim, and no response is required. To the extent a  
11 response is required and the allegations are directed at Apple, Apple denies each and every  
12 allegation in Paragraph 151.

13       152. Plaintiffs dismissed this claim, and no response is required. To the extent a  
14 response is required and the allegations are directed at Apple, Apple denies each and every  
15 allegation in Paragraph 152.

16       153. In answer to the Prayer for Relief, Apple denies each and every allegation and  
17 specifically denies that Plaintiffs are entitled to any relief described or to any remedy whatsoever  
18 against Apple. Except as otherwise admitted, Apple denies each and every allegation in  
19 Paragraph 153.

20       154. Apple denies each and every allegation in Paragraph 154.

21       155. Apple denies each and every allegation in Paragraph 155.

22       156. Apple denies each and every allegation in Paragraph 156.

23       157. Apple denies each and every allegation in Paragraph 157.

24       158. Apple denies each and every allegation in Paragraph 158.

25       159. Apple denies each and every allegation in Paragraph 159.

26       160. Apple denies each and every allegation in Paragraph 160.

27       161. Apple denies each and every allegation in Paragraph 161.

28       162. Apple denies each and every allegation in Paragraph 162.

163. Apple denies each and every allegation in Paragraph 163.

164. Apple denies each and every allegation in Paragraph 164.

## **APPLE'S AFFIRMATIVE DEFENSES**

Without assuming any burden that it would not otherwise bear, Apple asserts the following affirmative defenses. Apple reserves its right to amend its Answer to assert additional defenses as they may become known during discovery.

**FIRST DEFENSE**

## **(Failure to State a Claim)**

The Complaint fails to state claims or causes of action upon which relief can be granted.

## **SECOND DEFENSE**

#### **(Lack of Standing to Sue)**

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to bring the claims asserted.

## **THIRD DEFENSE**

### (Lack of Causation)

Plaintiffs' claims are barred, in whole or in part, because to the extent Plaintiffs have suffered the injury or damages alleged, such injury or damages were not legally or proximately caused by Apple.

## FOURTH DEFENSE

### **(Failure to Mitigate Damages)**

Plaintiffs have failed to mitigate damages, if any, and any recovery should be reduced or denied accordingly.

## FIFTH DEFENSE

## (Degree of Fault)

To the extent that Apple is found liable for damages—if any such damages there were or are, the fact and extent of which are expressly denied by Apple—those damages must be reduced in proportion to Apple’s degree of fault.

## **SIXTH DEFENSE**

## **(Statutes of Limitations)**

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

## **SEVENTH DEFENSE**

#### **(Independent Business Justifications)**

Plaintiffs' claims are barred, in whole or in part, because Apple's alleged conduct has been based on independent, legitimate business and economic justifications, without any purpose or intent to injure competition.

## **EIGHTH DEFENSE**

#### **(Pro-competitive Justifications)**

Plaintiffs' claims are barred, in whole or in part, because they are not based on exclusionary conduct but rather are based on conduct that has the purpose or effect of promoting, encouraging, or increasing competition.

## **NINTH DEFENSE**

(Ultra-Vires)

16 Plaintiffs' claims are barred to the extent that any actionable conduct was committed by  
17 any individual acting ultra vires.

## **TENTH DEFENSE**

(Offset)

Plaintiffs' claims are barred, in whole or in part, to the extent that any claimed injury or damages have been offset by benefits received with respect to the challenged conduct.

## **ELEVENTH DEFENSE**

## **(Settlement and Release)**

Plaintiffs' claims against Apple are barred, in whole or in part, to the extent that Plaintiffs and/or any alleged class members have entered into settlement agreements by which they released any such claims.

## **TWELFTH DEFENSE**

## **(Arbitration)**

Plaintiffs' action against Apple is barred, in whole or in part, to the extent that Plaintiffs and/or any alleged class members have entered agreements by which they agreed to arbitrate any such claims.

## **THIRTEENTH DEFENSE**

### **(Incorporation of Defenses of Others)**

Apple adopts by reference any applicable defense pleaded by any other defendant.

## **PRAAYER FOR RELIEF**

**WHEREFORE**, Defendant Apple prays:

1. That the Complaint be dismissed as to Apple, with prejudice;
2. For costs of suit and reasonable attorneys' fees incurred herein; and
3. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Apple hereby demands a trial by jury of all issues.

Dated: May 21, 2012

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